

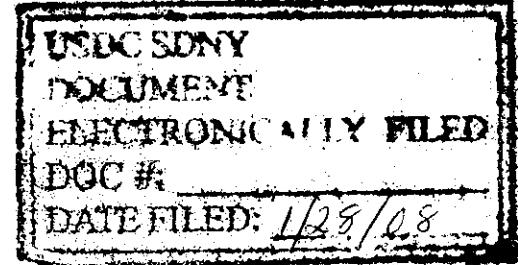
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK----- x  
JESSE RODRIGUEZ,

Petitioner,

-against-

JAMES CONWAY, Superintendent, Attica  
Correctional Facility & DEPARTMENT OF  
CORRECTIONAL SERVICES,

Defendants.



07 Civ. 9863 (JSR) (AJP)

**ORDER**

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**ANDREW J. PECK, United States Magistrate Judge:**

Petitioner Rodriguez's habeas petition raises an ineffective assistance of counsel claim. (Dkt. No. 1: Pet. ¶ 11(B).) Respondents' brief makes clear that Rodriguez did not bring a C.P.L. § 440 motion in State Court but merely asserted his ineffective assistance claim on appeal, and that "petitioner can still bring a 440.10 motion in the state trial court. . . ." (State Br. at 32.)

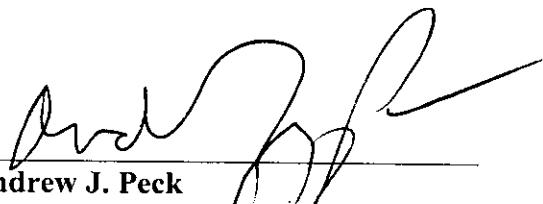
Accordingly, to fully exhaust this claim, Rodriguez is to bring a C.P.L. § 440 motion in Supreme Court, New York County, within 30 days of this Order, and submit a copy of said motion to this Court. Rodriguez must advise this Court of the state court's decisions (including on appeal) of his § 440 motion, within 30 days of the last state court's decision on his C.P.L. § 440 motion.

Failure to comply with these deadlines will result in denial of Rodriguez's ineffective assistance claim.

Rodriguez's habeas petition will be held in abeyance by this Court while he exhausts his state court remedies, as per the above. Alternatively, if Rodriguez wishes to withdraw his ineffective assistance habeas claim (thereby forfeiting any further federal review of that claim) in order to have the rest of his claims heard by this Court more quickly, he should so advise the Court.

SO ORDERED.

Dated: New York, New York  
January 28, 2008



Andrew J. Peck  
United States Magistrate Judge

Copies to: Jesse Rodriguez (Mail)  
Susan Gliner, Esq. (Fax)  
Judge Jed S. Rakoff